

## Health and Medicaid Initiatives Account

### (I 149 Tobacco Tax Increase)

**53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) to fund new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) to provide a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) (a) Except for \$1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.

(b) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget

director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.

**History:** En. Sec. 7, I.M. No. 149, approved Nov. 2, 2004; amd. Secs. 9, 13, Ch. 287, L. 2005; amd. Sec. 33, Ch. 511, L. 2005; amd. Sec. 18, Ch. 595, L. 2005.



# Montana Legislative Services Division

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

## Legal Services Office

November 16, 2006

Lois Steinbeck  
Senior Analyst  
Legislative Fiscal Division

Dear Ms. Steinbeck:

I am writing in response to your November 4, 2006, letter requesting responses to several questions relating to the use of the health and Medicaid initiatives account, established in section 53-6-1201, MCA (the account). The questions related to proposed uses of the funds in the account contained in the proposed Executive budget. On numerous prior occasions, I have provided your office with an analysis of Article V, section 11(4), of the Montana Constitution. That subsection provides that a general appropriation bill is limited to containing only appropriations for the ordinary expenses of the Legislative, Executive, and Judicial Branches, for interest on the public debt, and for public schools. I have analyzed the interpretations of that provision and have noted that the constitutional provision and interpretations concerning appropriations are implemented by section 17-8-103(2), MCA, which provides that in no event does a condition or limitation contained in an appropriation act amend any other statute. All of my prior analyses concluded that it is inappropriate to appropriate money in a manner inconsistent with a governing statute and that the general appropriations act may not be used to amend statutes. However, there is nothing that precludes the Legislature from amending section 53-6-1201, MCA, to revise the permissible uses of the account. Section 53-6-1201, MCA, was amended by sections 9 and 13, Chapter 287, Laws of 2005, section 33, Chapter 511, Laws of 2005, and section 18, Chapter 595, Laws of 2005. With the caveat contained in the paragraph in mind, I will address each question in turn.

You have indicated that the proposed budget contains a proposal to have the Department of Public Health and Human Services (DPHHS) directly administer the Children's Health Insurance Program (CHIP) rather than contract for program claims payment and administration. You have indicated that this proposal includes approximately \$900,000 in additional expenditures from the account compared to base budget expenditures. You have indicated that the additional expenditures are proposed to be used for administration and a reserve fund to pay claims. You have also indicated that previously a private contractor provided the administrative functions and that premiums paid under CHIP financed those functions.

Your first question asks whether funds in the account may be used to fund current or expanded program administration or be used for a reserve fund. Section 53-6-1201(3)(a), MCA, provides that the account may be used only to provide funding for the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under CHIP and to provide outreach to the eligible children. The increased revenue in

this account is intended to increase enrollment rates for eligible children in CHIP and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005. As you are aware, I have previously responded to questions concerning the use of funds in the account. On February 15, 2005, I responded to questions from Representative Christine Kaufmann, Chair of the Joint Appropriations Subcommittee on Health and Human Services and on June 6, 2005, I responded to questions from Representative John Sinrud. On both occasions, I responded to questions concerning funding for CHIP. In both prior written responses, I pointed out that because section 53-6-1201, MCA, did not exist prior to January 1, 2005, all money in the account appears to be "increased revenue". I also previously stated that the restrictive language contained in section 53-6-1201(3)(a), MCA, is limited to "enrollment rates" and that although that term is not defined, it appears that it is intended to be synonymous with the number of children insured by CHIP. On both prior occasions, I concluded that it appears that the money in the account is intended to be used to insure additional children beyond the number of children insured under CHIP for the biennium ending June 30, 2005. Because funding for current or expanded program administration or a reserve fund does not increase the number of children insured under CHIP for the biennium ending June 30, 2005, it is inappropriate to use money in the account for these purposes. I believe that this analysis also responds to your third question concerning whether section 53-6-1201(3)(a), MCA, relates to appropriation levels or enrollment levels and your fourth question concerning the calculation of appropriation levels.

Your second question relates to whether funds in the account can be used to pay for changes in the federal Medicaid match rate for amounts appropriated by the 2005 Legislature. You have indicated that the 2005 Legislature appropriated funds as the state matching funds for several Medicaid expansions and provider rate increases in the 2007 biennium. You have also indicated that the federal Medicaid match rate is estimated to decline between fiscal year 2006 and the base budget year and continue to decline for each year of the 2009 biennium. You indicate that the Executive budget includes several requests to reduce federal funds and increase appropriations from the account to adjust the matching rate on the portion of Medicaid expansion costs appropriated by the 2005 Legislature. In my letter to Representative Sinrud, I pointed out that section 53-6-1201(3)(c), MCA, specifically authorizes the money in the account to be used for increased Medicaid services and Medicaid provider rates. The subsection also states that the increased revenue is intended to increase Medicaid services and Medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for Medicaid services and Medicaid provider rates. Section 53-6-1201(5), MCA, provides that the phrase "trended traditional level of appropriation" means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets. Section 53-6-101, MCA, establishes the Montana Medicaid program and enumerates services that are required to be provided under the program and that may be provided under the program. Section 53-6-101, MCA, also authorizes DPHHS to set rates for medical and other services provided to recipients of Medicaid. Section 53-6-1201(3)(c), MCA, restricts the money in the account to providing

additional services or to paying more for existing services based upon the newly calculated

trended traditional level of appropriation. I lack the wherewithal to calculate that amount, but assume that the Legislative Fiscal Division does not.

Your fifth question relates to an appropriate methodology for calculating CHIP enrollment. Because this question does not require legal analysis and interpretation, I decline to address it.

Sincerely,

Gregory J. Petesch  
Director of Legal Services

CI0429 6320gpqa.

# I-149 Tobacco Funding 2009 Biennium Budget Request (Fund 02772)

Program	DP Number	DP Name	FY 08 PL Adj.	FY 08 NP Adj.	FY 2008	FY 09 PL Adj.	FY 09 NP Adj.	FY 2009
10 - DSD	PL 10001	Annualize FY06 I-149 Funding	\$ 475,001	\$ 1,717,826	\$ 475,001	\$ 475,001	\$ 2,185,587	\$ 475,001
10 - DSD	NP 10011	DD Rate Rebasing			\$ 1,717,826			\$ 2,185,587
<b>Total Program 10 Disability Services Division</b>					<b>\$ 2,192,827</b>			<b>\$ 2,660,588</b>
11 - HRD	NP 11013	CHIP Self Administration		\$ 1,236,420	\$ 1,236,420		\$ 1,246,569	\$ 1,246,569
11 - HRD	NP 11501	Provider Rate Increase		\$ 1,641,338	\$ 1,641,338		\$ 1,646,566	\$ 1,646,566
11 - HRD	PL 11007	Annualize FY06 Medicaid Tobacco Portion I-149			\$ 2,951,188	\$ 2,951,188		\$ 2,951,188
11 - HRD	PL 11008	Big Sky RX Base Adj.	\$ 2,951,188		\$ 7,645,589	\$ 7,642,731		\$ 7,642,731
11 - HRD	PL 11009	CHIP Enrollment	\$ 611,166		\$ 611,166	\$ 523,952		\$ 523,952
11 - HRD	PL 11031	CMH - Direct Care Wage Biennial	\$ 198,404		\$ 198,404			
<b>Total Program 11 Health Resources Division</b>					<b>\$ 14,284,105</b>			<b>\$ 14,011,006</b>
22 - SLTC	NP 22501	Annualize FY06 Provider Rate Increases		\$ 1,573,431	\$ 1,573,431		\$ 1,578,443	\$ 1,578,443
22 - SLTC	PL 22209	Annualize Waiver Expansion Costs			\$ 829,669	\$ 829,669		\$ 829,669
22 - SLTC	PL 22215	FMAP Change for I-149 NH Provider Increase	\$ 829,669		\$ 111,741	\$ 117,192		\$ 117,192
22 - SLTC	PL 22216	FMAP Change for I-149 Home Based Provider Inc.	\$ 111,741		\$ 14,651	\$ 15,366		\$ 15,366
22 - SLTC	PL 22217	FMAP change for I-149 Waiver Provider Care Inc.	\$ 14,651		\$ 12,213	\$ 12,809		\$ 12,809
22 - SLTC	PL 22218	Annualize Nursing Home Direct Care Wage	\$ 12,213		\$ 519,324	\$ 476,173		\$ 476,173
22 - SLTC	PL 22219	FMAP Change I-149 Home Based Direct Care Wages	\$ 519,324		\$ 34,149	\$ 35,815		\$ 35,815
22 - SLTC	PL 22220	FMAP change for I-149 Waiver Provider Rate Inc.	\$ 34,149		\$ 6,994	\$ 7,336		\$ 7,336
<b>Total Program 22 Senior Long Term Care Division</b>					<b>\$ 3,102,172</b>			<b>\$ 3,072,803</b>
33 - AMDD	PL 33402	Medicaid Caseload Adj. - Mental Health	\$ 87,812		\$ 87,812	\$ 87,812		\$ 87,812
33 - AMDD	PL 33414	Annualize HCBS Waiver	\$ 1,323,324		\$ 1,323,324	\$ 1,327,540		\$ 1,327,540
33 - AMDD	NP 33701	Annualize FY06 Provider Rate Increases		\$ 327,689	\$ 327,689		\$ 362,087	\$ 362,087
<b>Total Program 33 Addictive &amp; Mental Disorders</b>					<b>\$ 1,738,825</b>			<b>\$ 1,777,439</b>
<b>Grand Total</b>					<b>\$ 21,317,929</b>			<b>\$ 21,521,836</b>

NOTE: Some items adjust the FMAP for new services or provider rate increases that were added by the 2005 legislature. The total costs for these items have not changed; only the tobacco and federal fund mix has been adjusted based on the expected federal participation rate.

# I-146 Tobacco CHIP Funding 2009 Biennium Budget Request (Fund 02789)

Program	DP Number	DP Name	FY 08 PL Adj.	FY 08 NP Adj.	FY2008	FY 09 PL Adj.	FY 09 NP Adj.	FY 2009
11 - HRD	PL 11006	CHIP FMAP Match Rate	\$ 313,283		\$ 313,283	\$ 350,424		\$ 350,424

# I-146 Tobacco Prevention Funding 2009 Biennium Budget Request (Fund 02790)

Program	DP Number	DP Name	FY 08 PL Adj.	FY 08 NP Adj.	FY2008	FY 09 PL Adj.	FY 09 NP Adj.	FY 2009
07 - PHSD	NP 70108	Diabetes & Heart Disease Prevention		\$ 330,000	\$ 330,000		\$ 330,000	\$ 330,000
07 - PHSD	NP 70106	Tobacco Prevention Activities		\$ 1,370,000	\$ 1,370,000		\$ 1,370,000	\$ 1,370,000
<b>Total Program 7 Public Health and Safety Division</b>					<b>\$ 1,700,000</b>			<b>\$ 1,700,000</b>

# Tobacco Settlement Trust Interest (Fund 02987)

Program	DP Number	DP Name	FY 08 PL Adj.	FY 08 NP Adj.	FY2008	FY 09 PL Adj.	FY 09 NP Adj.	FY 2009
07 - PHSD	NP 70108	Diabetes and Heart Disease Prevention		\$ -	\$ -		\$ 500,000	\$ 500,000
07 - PHSD	NP 70103	Tobacco Trust Fund Sup for Pblc Hlth Home Visits		\$ 200,000	\$ 200,000		\$ 200,000	\$ 200,000
07 - PHSD	NP 70005	Newborn Screening follow-up Program		\$ 290,000	\$ 290,000		\$ 290,000	\$ 290,000
<b>Total Program 7 Public Health and Safety Division</b>					<b>\$ 490,000</b>			<b>\$ 990,000</b>
11 - HRD	NP 11011	Dental Access		\$ 555,000	\$ 555,000		\$ 555,000	\$ 555,000
22 - SLTC	NP 22904	Personal Needs Increase		\$ 128,071	\$ 128,071		\$ 128,438	\$ 128,438
<b>Grand Total</b>					<b>\$ 1,173,071</b>		<b>Grand Total</b>	<b>\$ 1,673,438</b>



# **FMAP DPs Using I149 Funds**

dp_no	dp name	dp_type	fund	fund name	y1_pl_adj	y2_pl_adj
11031	CMH - Direct Care Wage Biennial	PL	02772	Tobacco H	198,404	-
22215	FMAP Change For I 149 NH Provider Increase	PL	02772	Tobacco H	111,741	117,192
22216	FMAP Change For I 149 Home Based Provider Incre	PL	02772	Tobacco H	14,651	15,366
22219	FMAP Change -I149 Home Based Direct Care Wage	PL	02772	Tobacco H	34,149	35,815
22217	FMAP Change For I 149 Waiver Provider Rate Inc	PL	02772	Tobacco H	12,213	12,809
22220	FMAP Change-I149- Direct Care Wages Med Waiver	PL	02772	Tobacco H	6,994	7,336
				<b>Total</b>	<b>378,152</b>	<b>188,518</b>